

IN THE SUPREME COURT OF THE STATE OF DELAWARE

OLIVER LANCASTER,	§
	§ No. 458, 2010
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 1001003089
Plaintiff Below-	§
Appellee.	§

Submitted: September 20, 2010

Decided: November 29, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 29<sup>th</sup> day of November 2010, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Oliver Lancaster, filed this appeal from his Superior Court sentence for a violation of probation (VOP). The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Lancaster's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Lancaster pled guilty in March 2010 to one count each of third degree assault and second degree unlawful

imprisonment. The Superior Court immediately sentenced Lancaster to a total period of two years at Level V incarceration to be suspended immediately for one year at Level III probation. Lancaster did not appeal.

(3) On May 5, 2010, a VOP report was filed in the Superior Court. The report charged that Lancaster had been arrested on a new criminal offense of third degree assault on April 5, 2010 and also that Lancaster failed to report to his probation officer as instructed and had absconded from supervision. Lancaster was arrested in June on a bench warrant and was held in lieu of bail. While being arrested, Lancaster picked up new criminal charges of resisting arrest and offensive touching. On July 6, Lancaster pled guilty in the Family Court to one count of resisting arrest. In exchange for his plea, the State dismissed the charges of third degree assault and offensive touching. On July 14, after holding a hearing, the Superior Court found that Lancaster had violated the terms of his probation. Lancaster was sentenced, effective June 5, 2010, to two years at Level V incarceration, with credit for 14 days previously served, to be suspended after serving one year in prison for six months at Level IV, followed by six months at Level III.

(4) In his opening brief on appeal, Lancaster asserts that the Superior Court abused its discretion in relying upon his conviction for resisting arrest as the basis for finding a VOP because the violation report

was founded upon Lancaster's arrest for third degree assault, which was dismissed. Lancaster also contends that the Superior Court erred in sentencing him to a year at Level V incarceration when his probation officer recommended only six months at Level IV work release or home confinement followed by six months at Level III probation.

(5) We find no merit to Lancaster's arguments. Lancaster concedes that he pled guilty in the Family Court on July 6 to one count of resisting arrest, while he was on probation. It is irrelevant that the incident leading to the charge to which he pled guilty occurred after the initial VOP report was filed. The Superior Court did not abuse its broad discretion in revoking Lancaster's probation based on this new conviction.<sup>1</sup>

(6) Moreover, the Superior Court was not obligated to follow the sentencing recommendation made by Lancaster's probation officer.<sup>2</sup> The Superior Court's VOP sentence did not exceed the Level V term that was suspended on Lancaster's original sentence or the statutory limits.<sup>3</sup> Accordingly, the VOP sentence was legal, and we find no abuse of the Superior Court's exercise of discretion.

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<sup>1</sup> *Brown v. State*, 249 A.2d 269, 271-72 (Del. 1968).

<sup>2</sup> *Cruz v. State*, 990 A.2d 409, 417 (Del. 2010) (holding that the Superior Court had discretion, given the defendant's history of noncompliance, to violate the defendant's probation and impose a prison term notwithstanding the probation officer's recommendation to the contrary).

<sup>3</sup> *Vincent v. State*, 2004 WL 2743512 (Del. Nov. 17, 2004).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice